Editor's note: 94 I.D. 394

CELSIUS ENERGY CO.

SOUTHLAND ROYALTY CO.

IBLA 85-624 Decided September 8, 1987

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, holding that oil and gas leases W-87871, W-87875, W-92981, and W-92982 were continued in effect for a 2-year term and so long thereafter as oil or gas is produced in paying quantities.

Reversed and remanded.

1. Oil and Gas Leases: Unit and Cooperative Agreements

   Under 30 U.S.C. § 226(j) (1982), the Department is without authority to create separate leases out of a single lease upon its partial elimination from a unit plan by contraction of the unit area. Thus, partial elimination of a lease has no effect on its tenure.

2. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Unit and Cooperative Agreements

   Under 30 U.S.C. § 226(j) (1982), any lease partially committed to a unit plan shall be segregated into

separate leases as to the lands committed and the lands not committed. Thereafter, they are distinct leases, and are administered independently of each other. The statute does not give the segregated nonunitized portion of a lease a new term, but provides that the lease shall continue in force and effect for the term thereof, but for not less than 2 years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities. The word "term" here refers to the entire term of the lease, i.e., the period the lease has to run, whether that period were definite or indefinite, as it existed on the date of segregation.

3. Oil and Gas Leases: Unit and Cooperative Agreements

When a lease is segregated upon partial commitment to a unit agreement pursuant to 30 U.S.C. § 226(j) (1982), production on one segregated lease can extend the term of the other segregated lease only if the segregation occurs when the base lease is in an extended term because of production and not in a fixed term of years.

4. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Unit and Cooperative Agreements

Under 30 U.S.C. § 226(j) (1982), any lease which shall be eliminated from any approved unit plan and any lease which shall be in effect at the termination of such a plan shall continue in effect for the original term thereof, but for not less than 2 years, and so long thereafter as oil or gas is produced in paying quantities. This provision is mandatory and leaves no room for the exercise of discretion. It applies to any lease eliminated from a unit plan without exception.

5. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Unit and Cooperative Agreements

If a lease is no longer in its original term, but is held by production at the time of its elimination from a unit, it continues under 30 U.S.C. § 226(j) (1982), for a fixed term of 2 years and so long thereafter as oil or gas is produced in paying quantities.

6. Oil and Gas Leases: Unit and Cooperative Agreements

The legislative history of the provision of the Mineral Leasing Act covering unitization of Federal leases, 30 U.S.C. § 226(j) (1982), contains clear and specific evidence of legislative intent that the provisions concerning elimination of leases from units and segregation of leases were intended to benefit lessees by encouraging the separate development of nonunitized lands. These provisions were not intended to allow such land to be held by production from other leases.

Conoco, Inc., 90 IBLA 388 (1986), and Wexpro Co., 90 IBLA 394 (1986), overruled prospectively; Anadarko Production Co., 92 IBLA 212, 93 I.D. 246 (1986), and Bass Enterprises Production Co., 47 IBLA 53 (1980), modified and distinguished.

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Celsius Energy Company (Celsius) and Southland Royalty Company (Southland) have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 12, 1985, holding that leases W-87871, W-87875, W-92981, and W-92982 were to continue in effect through September 1, 1985, and so long thereafter as oil or gas was produced in paying quantities. Appellants contend that these leases should be deemed to be held by production from the base leases from which they were segregated, W-9389 and W-32235.

I.

The decision regarding these leases was made after the elimination of certain land from the Spearhead Ranch Unit on September 1, 1983, and the creation of the Powell Pressure Maintenance (PPM) Unit, effective September 1, 1983. The tenure of these leases involves the application of the following provisions of the Mineral Leasing Act, 30 U.S.C. § 226(j) (1982):

> Any * * * lease * * * which has heretofore or may hereafter be committed to any such [unit] plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of the lease. Any lease heretofore or hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: Provided, however, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities.
>
> * * * * * * *
>
> * * * Any lease which shall be eliminated from any such approved or prescribed plan * * * and any lease which shall be in effect at the termination of any such approved or prescribed plan * * * shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities. [Emphasis supplied.]

Although somewhat complex, the foregoing provisions do not lack precision. They are comprehensive and contain specific language governing the tenure of leases upon (1) commitment to a unit plan, (2) partial commitment to a unit plan, and (3) elimination from a unit plan.

In order to provide the maximum assurance that our disposition of this appeal is consistent with the will of Congress, our first task is necessarily to state the history of these leases and identify the portion of the statute quoted above that pertains to a particular event. As the discussion which follows will make clear, the tenure of the various leases is not governed by the same provision of 30 U.S.C. § 226(j) (1982). Accordingly, we first discuss the history of lease W-9389 and the leases which were segregated from it, W-87871 and W-92981.

II. A.

Oil and gas lease W-9389 was issued for a primary term of 10 years beginning December 1, 1967. Effective August 9, 1974, this lease was partially committed to the Spearhead Ranch Unit. The nonunitized portion was segregated into lease W-47594, which is not subject to this appeal. The unitized portion, which included the lands involved in this appeal, retained serial number W-9389. Under 30 U.S.C. § 226(j) (1982), lease W-9389 would "continue in force and effect as to the land committed so long as the lease remained subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease." (Emphasis in original.) Although no production was had prior to the end of the primary term, the lease was extended for 2 years beyond the end of its primary term by diligent drilling operations under the unit plan, pursuant to 30 U.S.C. § 226(e) (1982). Thereafter, the lease was held by unit production.

[1] The Spearhead Ranch Unit terminated with respect to some, but not all of the land in W-9389, effective September 1, 1983. When a lease is eliminated from a plan, the statute provides that it "shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities." 30 U.S.C. § 226(j) (1982). However, lease W-9389 was not completely eliminated from the Spearhead Ranch Unit. Thus, the partial elimination of W-9389 from the Spearhead Ranch Unit had no effect on the tenure of the lease because segregation takes place only when part of a lease is placed in a unit, not when a part of the lease is eliminated from the unit. Solicitor's Opinion, M-36592 (Jan. 21, 1960); accord, Marathon Oil Co., 78 IBLA 102 (1983).

II. B.

[2] On September 1, 1983, the Powell Pressure Maintenance Unit (PPM Unit) was approved. Lease W-9389 was partially committed to this new unit. The land in the PPM unit retained lease number W-9389 and the land not unitized was segregated into lease W-87871. The new lease, W-87871, included land still committed to the producing Spearhead Ranch Unit. When a lease is partially committed to a unit plan, it is "segregated into separate leases." 30 U.S.C. § 226(j) (1982). "Thereafter, they are distinct leases and are administered independent of each other." Solicitor's Opinion, M-36592 (Jan. 21, 1960). It logically follows that events which occur on one portion subsequent to segregation can have no effect on the tenure of the other portion. Indeed, any linkage between two segregated leases would tend to negate the fact that segregation had occurred. How, then, is it possible for leases

to be truly segregated if, as appellants contend, one lease can be extended by production from another lease? To answer this question, we must give close examination to the statutory provisions which govern the terms of those leases.

The following proviso of 30 U.S.C. § 226(j) (1982) governs the tenure of W-87871: "That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities." (Emphasis supplied.) The statute does not give the segregated, nonunitized lease a new term at the time of segregation; it continues the term of the lease as it was prior to segregation, but for at least 2 years.

Congress' use of the word "term" is important not only because it defines the tenure of the nonunitized portion but also because it can define the tenure of the unitized portion. A unitized lease is extended by its commitment to a unit agreement only if "production is had in paying quantities under the plan prior to the expiration date of the term of the lease." 30 U.S.C. § 226(j) (1982).

If segregation occurs when a lease is in a fixed term of years, the term of each segregated lease is the remainder of that term, but no less than 2 years, and so long thereafter as oil or gas is produced in paying quantities. Subsequent production on one lease cannot extend the other lease; to hold otherwise would negate the segregation. Even if the lease

already is producing during its fixed term of years when segregation occurs, the lease is still considered to be in a fixed term of years. Conoco Inc., 80 IBLA 161, 91 I.D. 181 (1984); Solicitor's Opinion, M-36543 (Jan. 23, 1959). At the end of that term, production beyond the lease term on one part of the segregated lease will not extend the term of the nonproducing part of the lease. Id. This result is consistent with the fact that segregation creates two independent leases.

However, W-9389 was not in a fixed term in 1983 when segregation occurred. Its term had been extended for an indefinite period by production from the Spearhead Ranch Unit. On one hand, it may be suggested that segregation requires independent administration, with the result that production on one segregated portion of the lease will no longer extend the life of the other portion to which it was once joined. The determination reached by BLM is consistent with this approach. On the other hand, the statute literally assigns each nonunitized portion the "term thereof," which at the time of segregation was an indefinite term, because the lease was extended by production. This suggests that each segregated lease was continued under the same indefinite term, with the result that production on one lease would continue to extend the term of the other. This constitutes a limited exception to the principle that segregated leases must be administered independently of one another. Is there any valid basis in the statute for such an exception?

If Congress had intended the word "term" to mean "primary term," BLM would have been correct in holding that lease W-87871 would continue in effect for 2 years and so long thereafter as the lease produced oil or gas

on its own. Lease W-9389 was no longer in its primary term when segregation occurred. But when one looks elsewhere in § 226(j), it becomes clear that this is not what Congress meant. In other portions of § 226(j) and elsewhere in the Act, Congress has modified the word "term" with words like "primary" or "original" when it wanted to refer to a fixed period of time. Shortly after the enactment of the 1954 amendments, the Solicitor compiled a list of most, if not all, of the uses of the word "term" in the Mineral Leasing Act, either by itself or modified, and discerned

> a consistent purpose to distinguish between the entire term and segments thereof and to expressly define the latter by the use of words of limitation. Thus, where Congress has wanted the law to apply to different fixed periods only, to wit, to 20-year and 5-year terms, it has used the words 'the original term.'

Solicitor's Opinion, 63 I.D. 246, 247 (1956). Citing specific evidence from the legislative history of the Act, 1/ the Solicitor concluded "that the word 'term' was intentionally used in this connection without modification to mean the period for which the lease was to run as of the crucial date and not as definitive of any particular period or periods of years." (Emphasis in original.) Id. Thus, when 30 U.S.C. § 226(j) (1982), provides that the nonunitized portion "shall continue in force and effect for the term thereof but for not less than two years," it means the entire term of the lease or period that the lease had to run, whether that period was definite or indefinite, as it existed on the date of the segregation.

1/ The particular item of legislative history upon which the Solicitor relied is set forth and discussed at the beginning of Part IV. D. of this opinion, infra.

[3] In accordance with the construction set forth in Solicitor's Opinion, 63 I.D. 246 (1956), the Department has ruled that production on one segregated lease can extend the term of the other segregated lease, but only if the segregation occurs when the base lease is in an extended term because of production and not in a fixed term of years. Ann Guyer Lewis, 68 I.D. 180 (1961); see also Solicitor's Opinion, M-36758 (Oct. 25, 1968); cf. Conoco, Inc., 80 IBLA 161, 91 I.D. 181 (1984) (because segregation occurred during fixed term, production on the base lease did not extend the nonproducing nonunitized segregated lease.)

Therefore, the term of W-87871 is the same as that of W-9389 when it was partially committed to the PPM Unit. W-9389 was in an extended term held by its own production, as well as by production under the Spearhead Ranch Unit, so W-87871 is held by the same production that had extended W-9389 when W-87871 was segregated from it. Because part of W-87871 remained committed to the Spearhead Ranch Unit, production from that unit also extended the lease.

By decision dated March 15, 1985, BLM approved the first expansion of the PPM Unit, although this action was also made effective September 1, 1983. Lease W-87871 was partially committed to this expansion; the land not committed was segregated and assigned serial No. W-92981. That lease was to continue in force and effect for the term of the lease from which it was segregated, W-87871, which in turn was to continue in force and effect for the term of the lease from which it was segregated, W-9389, both of which were in terms extended by production. At the time of this commitment, lease W-87871 was still held by production from the Spearhead Ranch Unit. Upon its

partial commitment to the PPM Unit, lease W-87871 would continue in force and effect as to the land committed so long as the lease remained subject to the PPM Unit plan, provided that production was had in paying quantities under the PPM Unit plan prior to the expiration date of the term of the lease, i.e., prior to the cessation of production under the Spearhead Ranch Unit. The lease that was not committed to the PPM Unit, W-92981, still contained land that was included in the Spearhead Ranch Unit and was in an extended term because of production from that unit. Because these leases were in their extended term by reason of production at a time when the segregations became effective, the segregated leases are continued by the production on the base leases from which they were segregated. BLM's decision with respect to lease numbers W-87871 and W-92981 finding that they were continued for 2 years and so long as oil and gas is produced in paying quantities is therefore incorrect, and must be reversed.

III. A.

We now turn to consideration of lease W-32235 and the leases segregated from it, W-87875 and W-92982. Oil and gas lease W-32235 was issued for a 10-year term which began on January 1, 1972. Effective August 7, 1974, this lease was partially committed to the Spearhead Ranch Unit. The nonunitized portion was segregated into lease W-47599, which is not now in issue. The unitized portion retained serial No. W-32235 and included the land at issue here. Under 30 U.S.C. § 226(j) (1982), this lease would "continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the

plan prior to the expiration date of the term of such lease." (Emphasis in original.) A producing unit well on lease W-32235 extended the lease beyond its primary term.

III. B.

[4] Effective September 1, 1983, all of lease W-32235, a producing lease, was eliminated from the unit. Unlike the situation with W-9389, this was not a partial elimination. When a lease is entirely eliminated from a unit, its tenure is governed by the following provisions of 30 U.S.C. § 226(j) (1982): "Any lease which shall be eliminated from any * * * plan * * * shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities." (Emphasis supplied.) Because the lease was not in its original term at the time of its elimination from the unit, it was extended for "two years, and so long thereafter as oil or gas is produced in paying quantities." Several observations may be made about this provision. First, its use of the word "shall" makes it mandatory, so it leaves no room for the exercise of discretion. Second, it applies to any lease eliminated from a plan, so there are no exceptions. Third, its meaning is clear, so there is no room for the exercise of interpretation.

[5] Thus, even though lease W-32235 may have been held by production prior to its elimination from the Spearhead Ranch Unit, it would continue to be held by production immediately after its elimination only if Congress in 1954 had also deleted the word "original" from this provision just as Congress

deleted the word "primary" from the provision pertaining to the tenure of a lease when it is committed to a unit. (See discussion at the beginning of Part IV. D. of this opinion below.) Congress did not amend this provision, so we have no authority to do anything else but to apply it, with the result that when W-32235 was eliminated from the Spearhead Ranch Unit, it was not held by production from the Spearhead Ranch Unit, but was held for a fixed term of 2 years and so long thereafter as oil or gas is produced in paying quantities.

III. C.

On the same day that lease W-32235 was eliminated from the Spearhead Ranch Unit, September 1, 1983, the lease was partially committed to the PPM Unit. The unitized portion included the producing well. The unitized portion would "continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease." As explained above, this lease obtained an expiration date of September 1, 1985, after its elimination from the Spearhead Ranch Unit. Lease W-32235 could be extended beyond that date by its own production, or by production under the unit.

The portion of W-32235 not placed in the PPM Unit was segregated into lease W-87875. Lease W-87875 was then further segregated by the first expansion of the PPM Unit. That portion within the first expansion of the PPM Unit retained lease number W-87875 and the portion segregated was identified

as lease W-92982, which "shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities." 30 U.S.C. § 226(j) (1982) (emphasis supplied).

As observed in Part II. B. of this decision, the word "term" here is not modified by the words "original" or "primary," so the segregated lease continues under the term of the base lease as it was before segregation. If the base lease is held by production, the segregated lease is held by that same production; if the base lease is in a fixed term, the segregated lease has that same term (but no less than 2 years) and so long thereafter as it produces on its own. See Conoco, Inc., 80 IBLA 161, 91 I.D. 181 (1984); Solicitor's Opinion, M-36543 (Jan. 23, 1959). Because base lease W-32235 was assigned a fixed term of 2 years by 30 U.S.C. § 226(j) upon its elimination from the Spearhead Ranch Unit, upon such segregation leases W-87875 and W-98982 also had a fixed term of 2 years and so long thereafter as oil or gas is produced therefrom in paying quantities. The segregated leases could not be extended by production elsewhere.

Appellants, however, stress that segregation did not occur after the elimination of W-32235 from the Spearhead Ranch Unit, but simultaneously with it, and rely upon our decisions in Conoco, Inc., 90 IBLA 388 (1986), and Wexpro Co., 90 IBLA 394 (1986), as authority for the proposition that a "simultaneous" elimination and recommitment to a unit would extend the non-unitized leases for the life of the unitized leases. This argument assumes that because lease W-32235 was held by production before its elimination from

the Spearhead Ranch Unit, the segregated leases would be continued by the same production if segregation occurred prior to the elimination of these leases from the Spearhead Ranch Unit. Because we now overrule our decisions in Conoco and Wexpro, this opinion will examine the legislative history of section 226(j) to show why this argument must now be rejected.

IV. A.

Appellants contend that BLM's decision is contrary to "the consistent policy of the Department and of Congress since the enactment in 1931 of the first unit operation legislation to encourage unitization," citing Solicitor's Opinion, M-36518 (July 29, 1958). Appellants state that "extremely favorable" treatment has been accorded to the segregated nonunitized portion, "mean[ing] in many cases that the extension [of the nonunitized portion] is for the life of production from the unitized portion." Id.

The quoted remark occurs as an aside in the context of a completely different issue: whether a segregation occurs if a lease is only partly committed to the unit plan, even though the lease is entirely within the unit area as described in the unit agreement. (There is no segregation.) Moreover, as we have shown above, the tenure of these leases does not arise from some discretionary choice of policy, but is governed by mandatory statutory provisions, the mechanical effect of which devolves upon a lease by operation of a law when a lease is partially committed to a unit or completely eliminated from a unit. Moreover, the policy to which appellants refer and which the Conoco and Wexpro decisions purport to follow had previously been

applied only in cases involving the partial commitment of a lease to a unit. Any need for such a policy under the 1931 Act disappeared in 1935 and 1946 when the Secretary was given the power to compel lessees to unitize if they did not voluntarily do so. 2/ There was absolutely no valid precedent for extending that policy to a lease which was eliminated from a unit, as the tenure of such a lease is governed by a different sentence of the statute.

The danger of looking to this rather indefinite policy statement for guidance, rather than to the statute and its legislative history is illustrated by a line of Departmental decisions involving unitized 20-year leases. In Texaco, Inc., 76 I.D. 196 (1969), the Department held that a 20-year lease that was in a unit at the end of its term was extended by § 226(j) and was not eligible for a 10-year-renewal term. In later cases involving different facts, Board members nevertheless criticized Texaco as being contrary to the policy in favor of unitization. Omaha National Bank, 11 IBLA 174, 186 (1973) (Frishberg, Chairman, concurring specially); id. at 187-90 (Henriques, Member, dissenting.) One decision even stated that Texaco "is open to some question." Marathon Oil Co., 19 IBLA 1, 3 (1975).

When the facts of Texaco arose again in Anne Burnett Tandy, 33 IBLA 106 (1977), the Board did not overrule Texaco. Instead, the Board examined

2/ "The Secretary may provide that oil and gas leases hereafter issued under this chapter shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States." 30 U.S.C. § 226(j) (1982).

the legislative history of the Mineral Leasing Act and found that although Congress intended to promote unitization, the critics of Texaco had completely misconceived how Congress intended to promote unitization. Thus, Tandy established that there can be no departure from the text of the statute in order to apply "the policy in favor of unitization" without careful examination of what Congress intended when it enacted the specific provision pertaining to a particular event affecting the tenure of a lease. Our failure to consider legislative intent in the Wexpro and Conoco decisions makes it necessary to do so here, in order that we may determine whether there is an intent contrary to the wording of the statute supporting the rationale of those decisions.

IV. B.

Initially, leases issued under the Mineral Leasing Act could not be held by production. Under section 17 of that Act, 41 Stat. 437, 443, leases were to be issued for a period of 20 years, with the preferential right in the lessee to renew the same for successive periods of 10 years. In Anne Burnett Tandy, supra at 109, we described the circumstances which impelled Congress to amend the Act to provide for unitization of leases.

> The ensuing decade [after enactment of the Mineral Leasing Act in 1920] was highlighted by the overproduction and wastage of oil and gas, and the need for some conservation measures became clear. Often, a pool would be carved into several leases. Each lessee would sink as many wells as possible to maximize short-term recovery to compete with his neighbor and prevent his lease from being drained. These competitive incentives resulted in overdrilling which lowered

> the pressure of the fields so that much oil was no longer recoverable. Unit agreements would allow lessees to combine for the more orderly exploitation of an oil or gas field. By eliminating the competition among lessees sharing a field, wasteful offset drilling would be curtailed and drilling patterns would be developed to maximize the long-term potential of a field.
>
> Temporary authority for approving unit agreements was first established by the Act of July 3, 1930, 46 Stat. 1007. With slight modification, that provision was made a permanent amendment to the Mineral Leasing Act by the Act of March 4, 1931, 46 Stat. 1523-24.

That statute had only one provision concerning lease tenure: that any lease committed to a plan of unitization "shall continue in force beyond said period of 20 years until the termination of such plan." The statute contained no provision for lease tenure after termination of a unit plan. Congress considered this provision to be adequate incentive to unitize. Congress believed that development of a field would take much longer than the 20-year term of a lease, and expressed its concern that a mere preferential right of renewal was not sufficient to ensure continued lease tenure. "Necessarily, a longer life of the field being promoted, it is essential that the Government lessees have the assurance of a tenure beyond 20 years; hence the amendment to section 17 is absolutely necessary." Report of the Senate Committee on Public Lands and Surveys, S. Rep. No. 1087, 71st Cong., 2nd Sess. at 2 (1931), quoted in Tandy, supra at 110. Congress evidently felt no need to assure continued tenure beyond the date of plan termination, since it believed that a field then would be depleted.

Congressional dissatisfaction with 20-year leases, which could not be extended by production, prompted an amendment to the Mineral Leasing Act

eliminating further issuance of those leases (except for outstanding permits) and establishing leases with 5- and 10-year terms with the proviso that the leases would continue beyond their term so long as oil or gas were produced in paying quantities. Act of August 21, 1935, ch. 599, 49 Stat. 674. The 1935 amendments retained the unitization provisions of the 1931 amendments, but only 20-year leases could be extended beyond their terms for the life of the unit. Although the 5- and 10-year leases could not be extended pursuant to this provision, such leases could be extended independently by production, and such leases as were included in producing units were considered to be extended by production under the provisions of the individual lease rather than by reason of the statutory provision relating to unitized leases. See General Petroleum Corp., 59 I.D. 383, 387 (1947). Even so, the 1935 amendments made no provision for extending a lease beyond the time of its elimination from a plan. A 20-year lease would continue to the end of its term, and would still be eligible for renewal. See H. Leslie Parker, 62 I.D. 88 (1955).

IV. C.

There was no statutory provision for extension of the lease after its elimination from a unit plan until 1946 when Congress added the following statutory language and extended the unitization provisions to the 5- and 10-year leases: "Any lease which shall be eliminated from any such approved or prescribed plan * * * shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities." Act of August 8, 1946, ch. 916, § 5,

60 Stat. 953. Although appellants consider BLM's application of this provision to exact a penalty, Congress actually considered such application to be an additional incentive to unitize. In its report on this provision at the time it was proposed, the Department commented that it "gives the lessee who surrenders his exclusive right to drill in the interest of conserving the oil and gas deposit an opportunity to drill his lease before it expires where, for any reason, it is excluded from the unit area." Report of the Department of the Interior to the Senate Committee on Public Lands and Surveys. S. Rep. No. 1322, 79th Cong., 2nd Sess. at 7-8 (1946). Because the intended benefit consisted solely of the opportunity to drill on the eliminated parcel, Congress clearly did not contemplate the extension of such a lease by production elsewhere. The 2-year-extension provision was expressly intended to assure the lessee adequate time to drill on the eliminated parcel. 3/

IV. D.

Further amendments were made to this Act by the Act of July 29, 1954, ch. 644, § 1(1)-(3), 68 Stat. 583. Under the 1946 provisions, any lease other than a 20-year lease would be extended by commitment to a unit agreement only if oil or gas were discovered under the plan "prior to the expiration date of the primary term of such lease." (Emphasis added.) The 1954

3/ Of course, it may be suggested that a lease in producing status at the time of its elimination from a plan would not have required the protection afforded by this provision. However, under the statute as it existed prior to the 1954 amendments, the lease would terminate upon cessation of production if actual drilling operations were not in effect when production ceased, because the law then contained no provision allowing a lease a 60-day period in which to commence production. The provision for a fixed term of 2 years after plan termination therefore, conferred a benefit upon any lease eliminated from a unit plan, regardless whether the lease was producing or nonproducing.

amendments required production in paying quantities instead of discovery to extend a lease, and deleted the word "primary." The stated reason for the change was:

> Under present law, leases committed to an approved unit plan of operation are extended beyond the 5-year term and coextensive with the life of the unit plan if oil or gas is discovered under the plan. This extension is limited to leases in their first 5-year period. If discovery is made beyond the 5-year period, such leases do not get the benefit of being committed to a unit plan and a discovery in such unit plan. The proposed amendment would extend all leases, whether in their primary term or secondary term, or of whatever nature they are committed to an approved unit plan of operation, upon discovery of oil or gas anywhere within the boundaries of such plan.

H.R. Rep. No. 2238, reprinted in 1954 U.S. Code Cong. and Ad. News, at 2698. The reader should note that Congress did not delete the word "original" from the provision which governs tenure of a lease eliminated from a unit plan. 4/

The 1954 amendments also added the provision for segregation of a lease upon partial commitment to a unit plan:

4/ In making a distinction based on the use of a modifier such as "primary," we are not grasping at some obscure technicality. The effect of this modifier was keenly understood by the oil and gas industry, whose spokesmen supported its deletion from the portion of the statute to which we referred above, because the presence of the word

"resulted in great operating difficulties when you had, for example, a 5-year noncompetitive lease in its secondary term and you attempted to unitize that lease and you found you couldn't keep it alive by unitization.

"It is a technical problem, but it is one we have encountered many times in the Rocky Mountains.

"That amendment is designed to remedy that inequity which now exists between those two classes of leases."

To Amend the Mineral Leasing Act: Hearing before the Subcomm. on Public Lands of the Senate Comm. on Interior and Insular Affairs on S. 2380, S. 2381, and S. 2382, 83rd Cong., 2d Sess. 22 (1954) (statement of Howard M. Gullickson, Chairman, Legal Committee, Rocky Mountain Oil and Gas Association) (herein-after cited at Hearing).

> Also, this amendment would provide for segregation of any portion of a lease not committed to the plan, and such segregated portion would be extended for at least 2 years after segregation to enable the lessee for the lands outside the unit plan to drill and, if he discovers oil or gas in paying quantities, it would continue indefinitely as long as oil or gas is produced.

Id. at 2698.

[6] Again, the intended benefit of segregation was the opportunity for separate development. The nonunitized segregated portion of lease would benefit because the lessee would no longer be subject to the drilling restrictions of the unit plan. As this Department explained in a report which was appended to the House Report:

> Since the rights of individual leaseholders to drill on leases committed to a plan are severely curtailed, none of them should be penalized because of necessary delays in obtaining production from the unit area. The enactment of this legislation would not delay development since unit plans have their own development requirements. In fact, these requirements are intended to be substituted for, and they customarily are far more rigorous than those contained in the individual leases. The amendment proposed in this report would provide for segregation of any portion of a lease not committed to the plan and for continuance of such a segregated lease for at least 2 years after segregation and so long thereafter as oil or gas is produced in paying quantities on the segregated portion of the lease.

Id. at 2701. In conclusion, Congress saw these provisions as advantageous because they free lands outside of unit areas for independent development. 5/

5/ This intent is further clarified by an explanation of the consolidated bills by BLM's Chief of the Division of Minerals:

"[T]his amendment would provide for segregation of any portion of a lease not committed to the plan, and such segregated portion would be extended for at least 2 years after segregation to enable the lessee for the lands outside the unit plan to drill and if he discovers oil or gas in paying quantities, it would continue indefinitely as long as oil or gas is produced." Hearing, supra n.4 at 40 (emphasis added).

Congress, however, established a limitation on this privilege, by providing that production had to occur on the eliminated or segregated lease, by the end of its term, but no less than 2 years after the date of segregation or elimination from the plan.

Thus, it is clear that Congress did not intend for these eliminated leases to be extended by production within the unit, and, further, the policy favoring unitization of leases can exist only to the extent that Congress specifically provided for certain benefits. 6/ In resolving the perceived ambiguities, we must remember that the 1954 amendments to § 226(j) were among several changes in the Mineral Leasing Act made by Congress at that time. The general intent of those amendments was "to close all possible loopholes in the administration of the law * * *, such as, for example, a possibility that lessee might avoid production requirements * * *." H.R. Rep. No. 2238,

---

6/ The policy to encourage unitization is not open-ended. By 1954, one specific benefit of unitization, the exemption from acreage limitations, encouraged too much unitization, as one industry spokesman complained:

"Leased or optioned acreage which is committed to a unit agreement, in a form recommended or approved by the Secretary of the Interior, is exempt from the acreage limitations now contained in the Mineral Leasing Act. Unit agreements are designed to aid conservation, and the oil and gas industry has been quick to recognize the value of such agreements, as promoting orderly and efficient development of a field. However, because of the exemption in acreage limitations afforded by the Mineral Leasing Act, it is only reasonable to assume that a number of the unit agreements, which have been flooding the Department of the Interior, are prompted, at least in part, by desire on the part of the operator to reduce his chargeable acreage. This flood of unit agreements has made the work of the Department of the Interior much more difficult, and it is believed that a liberalization of the acreage limitations will result in a reduction of the number of unit agreements submitted. Under no circumstances, however, does the industry recommend that the exemption, presently afforded by the Mineral leasing Act as to unitized land, be taken away. Conversely, it is recommended that the exemption be retained."

(Letter from H. B. Grenert, President, Rocky Mountain Oil and Gas Association, Hearing, supra n.4 at 50.) Of course, the industry did not recommend repeal of this benefit of unitization; rather, it was felt that increasing the acreage limitation would discourage this abuse of unitization.

supra, reprinted in 1954 U.S. Code Cong. and Ad. News, supra at 2696. Contrary to the general purpose of the legislation to close all possible loopholes by which a lessee might avoid production requirements, our Conoco and Wexpro decisions allow a lessee to avoid production requirements for the segregated portion of a lease by imputing production from the unitized portion. Such result is clearly inconsistent with both the language of the statute and the stated legislative intent.

IV. E.

The Department's report included in the legislative history contemplates that the nonunitized portion of a segregated lease would continue "for at least 2 years after segregation and so long thereafter as oil or gas is produced in paying quantities on the segregated portion of the lease." H.R. Rep. No. 2238, reprinted in 1954 U.S. Cong. and Ad. News, supra at 2701. Although the emphasized language was not part of the statutory text proposed by the Department, it nevertheless describes the intended meaning and effect of the proposed statutory language which Congress adopted verbatim when it enacted the statute into law. The emphasized language of the House Report cited above suggests that the views expressed in Solicitor's Opinion, M-36518 (July 29, 1958), are contrary to the legislative intent to the extent that they suggest there are circumstances under which a nonunitized segregated portion of a lease can be extended by production on the unitized portion. Indeed, if taken literally this language would cast doubt upon the correctness of our analysis in Part II. B. of this opinion concerning the leases segregated from W-9389, and support the result reached by BLM. Although the

emphasized language appears only in the Interior Department's report, this report was appended to the House Report, and courts have generally accepted such appended reports and letters from officials of this Department as evidence of legislative intent. See e.g., Watt v. Western Nuclear, Inc., 462 U.S. 36, 50, 55-56 (1983); Utah Power & Light Co. v. United States, 243 U.S. 389, 407 n.1 (1917); United States v. Union Oil Co., 549 F.2d 1271, 1277 (9th Cir.), cert. denied sub nom. Ottoboni v. United States, 434 U.S. 930 (1977). So has this Board. E.g., Western Nuclear, Inc., 35 IBLA 146, 157, 85 I.D. 129, 135 (1978), aff'd, Watt v. Western Nuclear, Inc., supra; Cecil A. Walker, 26 IBLA 71, 76 (1976). Inasmuch as such reports represent views of senior officials of this Department which served as the basis for legislative action, this Board is not generally disposed to apply enacted legislation in a manner inconsistent with such statements. Id. Such a conclusion is especially compelling where, as here, Congress enacted verbatim the statutory language proposed by the agency.

In Anne Guyer Lewis, supra, the issue was whether a unitized lease could be extended by production on the nonunitized portion. The Department suggested that the statute did not specifically cover the facts in that case; however, the conclusion reached was in accord with a mechanical application of the language of the statute, as we demonstrated in Part II. B. It did not really involve a policy choice. The holding in Lewis was predicated on the fact that Congress consciously employed the word "term" when it wished to refer to an indefinite period, but modified "term" with words such as "original" or "primary" when it wanted to refer to a fixed period. We follow this construction of the statute not only because it most closely corresponds to

the exact text of the Act, but because this construction is also supported by the legislative history. See Solicitor's Opinion, 63 I.D. 246 (1956).

V.

In Part III of this opinion, we showed how the results declared by the Conoco and Wexpro decisions were contrary to express provisions of the statute. In Part IV, we established that those results were contrary to the legislative intent. Although this provides sufficient basis for overruling those decisions, it is important to examine the rationale of those cases to see how it led to incorrect results.

As we indicated before, we held in Wexpro that our decision was controlled by Conoco. After quoting the statutory language, which applies without exception whenever a lease is eliminated from a unit plan, we held: "Although the statute offers considerable guidance, it does not say what happens when unit termination and partial commitment occur simultaneously after the conclusion of the primary term, as here." Conoco, supra at 390 (emphasis in original). We now recognize there was no need for Congress to address this circumstance specifically because the statute dictates the result required when a lease is totally eliminated from a unit. As we hold here, regardless whether or not a lease is held by production when it is totally eliminated from a unit plan, it is not held by production during the first 2 years after such elimination. Whether the PPM Unit was created before, after, or simultaneously with the total elimination of lease W-32235 from the Spearhead Ranch Unit is irrelevant to the applicability of this provision. The sole fact of relevance is the fact that such elimination occurred.

In Conoco we found that the statute offered no guidance on the question of what happens when unit termination and partial commitment occur simultaneously. We next considered the effects of BLM's decision:

> BLM's decision granting only a 2-year term to lease W-87877 unless oil or gas is produced in paying quantities encourages prompt development of the 680 acres in this lease. See Conoco, Inc., 80 IBLA 161, 166, 91 I.D. 181, 184 (1984). In the absence of production in paying quantities on lease W-87877 or further unitization, the term of this lease is limited to 2 years. No production from outside this lease will affect its term, assuming the lease is not itself unitized.

Conoco, supra at 390-91. Although the legislative history suggests that these results were exactly what Congress intended, we reasoned that giving the nonunitized lease a term coextensive with the unitized lease somehow encourages unitization, and we further observed that "the segregation of a lease does not necessarily cause the resultant two leases to have independent terms." Id. at 392. In support of this proposition, we cited Bass Enterprises Production Co., 47 IBLA 53, 55 (1980); Ann Guyer Lewis, supra; and Solicitor's Opinion, M-36592 (Jan. 21, 1960).

Dictum in a footnote in the Bass decision appears to be one source of this error. In that opinion, the Board noted that a lease which had been totally eliminated from a unit agreement was nevertheless extended by production of another unit which included the lease with which the lease in question had been previously joined. Bass Enterprises, supra at 54-55. This observation made no difference to the outcome of the Bass appeal, and constituted dictum. In support of this dictum, the Board stated:

> While not precisely on point, Solicitor's Opinion, M-36592 (Jan. 21, 1960), is helpful in understanding what the "original term" of lease NM 15092, as that phrase is used in 30 U.S.C. § 226(j) (1976) and 43 CFR 3107.5, might be. When lease NM 15092 was created by the segregation of lease NM 024368-A on September 30, 1971, lease NM 024368-A was in its extended term by reason of production within the Red Hills Unit. The original term of lease NM 15092 included the entire, though indefinite, period which lease NM 024368-A had to run as of the date of segregation. See also Ann Guyer Lewis, 68 I.D. 180 (1961), and Solicitor's Opinion, M-36758 (Oct. 25, 1968).

Bass Enterprises, supra at 55 n.5. By suggesting that a segregated lease gets a new original term, Bass is in direct conflict with the statute, which does not assign such leases new terms but continues them for the term of the base lease. In Bass the Board suggested that an "original term" can include an indefinite period. However, this suggestion is totally inconsistent with the usage of that expression in the Mineral Leasing Act, a fact which was noted in Solicitor's Opinion, 63 I.D. 246 (1956), cited earlier in this opinion for the proposition that the phrase "the original term" can only refer to a fixed period of a lease term.

Moreover, the authorities cited by the Bass footnote provide no support for the conclusion in Bass. Indeed, they did not even address themselves to the issue for which Bass cited them as authority. The 1960 Solicitor's Opinion was not concerned with total elimination of a lease from a unit plan, but only with partial elimination of such a lease, and did not purport to construe the meaning of "original term." Instead, it construed the meaning of the word "term" in the context of a partial commitment of a lease. The 1968 Solicitor's Opinion did not involve a total elimination of a lease from a unit and did not purport to construe the meaning of the phrase

"original term." Similarly, the Lewis case also involves the "term" of a lease segregated upon partial commitment to a unit plan, not the "original term." Thus, none of these cases provide support by authority or dictum for the proposition for which they are cited in Bass. Therefore, the 1956 Solicitor's Opinion cited earlier is still the authority which governs the interpretation of the expression "original term" in this provision of the Mineral Leasing Act. Its rationale has not been overruled or even questioned. Indeed, the cases Bass cites rely on that 1956 Solicitor's Opinion to support their conclusions. Accordingly, Bass is modified to the extent that it is inconsistent with this opinion.

In Conoco and Wexpro we held that the simultaneous elimination of a lease from one unit and its partial commitment to a new unit constituted a circumstance for which the statute made no provision. We believed that the transaction was intended to achieve the same result as if only a partial elimination of the lease had occurred, so that the nonunitized lands could be indefinitely extended by production from the unitized lands. Closer examination of the legislative history has convinced us that structuring the transaction in such a manner is not in harmony with the legislative intent. Accordingly, these two decisions must be overruled prospectively. Because we applied the rationale announced in Conoco and Wexpro in Anadarko Production Co., 92 IBLA 212, 93 I.D. 246 (1986), that decision must also be modified, although the result in that case may have been correct to the extent the decision fails to state whether the base lease was partly eliminated, like W-9789, or totally eliminated, like W-32235. Taken by itself, the headnote in Anadarko does not misstate the law.

Therefore, applying the rules announced in this case, upon the elimination of lease W-32235 from the Spearhead Ranch Unit on September 1, 1983, that lease had a fixed term of 2 years and so long thereafter as oil or gas was produced in paying quantities. Upon elimination from the Unit, lease W-32235 could not be held by production until September 1, 1985. See Conoco, Inc., 80 IBLA 161, 91 I.D. 181 (1984). When lease W-32235 was partially committed to the PPM Unit, the nonunitized portion was extended for the fixed term of the base lease (but not less than 2 years) and so long thereafter as oil and gas were produced in paying quantities. It makes no difference that partial commitment to one unit and total elimination from another unit occurred simultaneously. If the partial commitment occurred first, the lease would have been segregated into two leases, with that portion of the lease subject to both units keeping serial no. W-32235 and the lease subject to a single unit being designated W-87875. Upon total elimination of W-87875 from the unit, lease W-87875 would have a fixed term of 2 years and so long thereafter as oil or gas was produced in paying quantities on that lease. When lease W-87875 was partly committed to the PPM Unit, the unitized portion would continue in force and effect so long as the lease remained subject to the plan, because production was had in paying quantities under the plan prior to September 1, 1985. See BLM decision dated March 15, 1983. The nonunitized portion, W-92982, continues in force and effect for the term of the base lease, but for not less than 2 years from the date of segregation. Again, at the time of segregation the base lease was not held by production; therefore, if we were to apply the rules set out in this case to the facts concerning W-32235, we would conclude that BLM correctly determined that lease W-92982 had a fixed term of 2 years and so long

thereafter as oil or gas was produced in paying quantities from the effective date of segregation of the lease. However, it is the sense of the Board that, because of possible reliance by BLM and appellants upon this Board's prior decisions in Conoco and Wexpro, the rules announced by this opinion should have prospective effect only. Accordingly, we reverse BLM's decision with respect to leases W-87875 and W-92982.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed. For lease extensions made following the date of the issuance of this opinion, however, in cases similar to those involving leases W-32235, W-87875, and W-92982, the rules described by this opinion shall be applied, and whether a lease may be said to be "simultaneously" eliminated from one unit while being partially committed to another shall be immaterial to the terms of the resulting extension of the lease.

Franklin D. Arness
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Bruce R. Harris
Administrative Judge